Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	GN Docket No. 93-252
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF ONECOMM CORPORATION

Michael R. Carper
Vice President & General Counsel
OneComm Corporation
4643 Ulster Street
Suite 500
Denver, CO 80237

July 11, 1994

TABLE OF CONTENTS

SUMMARY

OneComm endorses a wide-area licensing plan for digital Special Mobile Radio ("SMR") operators that will assist the Commission in carrying out its congressional mandate to ensure regulatory parity for SMR providers and ensure wide-area SMR operators' ability to compete effectively with other Commercial Mobile Radio Service ("CMRS") operators. The plan, which has been endorsed by the American Mobile Telecommunications Association ("AMTA") also accommodates traditional, high power SMR providers that do not wish to offer wide-area services.

The plan provides for (1) a contiguous block of 200 channels of spectrum for wide-area SMR providers, (2) the award of licenses on a Major Trading Area ("MTA") basis and (3) the award of one wide-area 800 MHz license in each MTA. If more than one qualified applicant seeks an MTA license, the Commission should require the interested parties to attempt to negotiate a settlement. The parties, however, would not be required to reach settlement, and would continue to operate in their existing self-defined serving areas if no agreement can be reached. Wide-area 800 MHz licensees would be allowed to migrate co-channel, traditional SMR operators to other fungible 800 MHz spectrum at the wide-area licensee's expense.

OneComm reiterates its strong opposition to the Commission's proposed aggregate spectrum cap for CMRS service providers. The vast majority of commenters from all segments of the communications industry agree that an across-the-board cap on CMRS spectrum is unnecessary to ensure competition among the various services. These commenters accurately state that existing spectrum caps for cellular and personal communications services providers created strong regulatory disincentives for licensees to act anticompetitively in acquiring spectrum.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	GN Docket No. 93-252
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF ONECOMM CORPORATION

OneComm Corporation ("OneComm")[1] submits these reply comments in accordance with Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. § 1.415, in response to the Further Notice of Proposed Rulemaking ("FNPRM") adopted by the Commission in the above-captioned proceeding on April 20, 1994.

OneComm's comments will (1) set forth a licensing plan for wide-area 800 MHz Special Mobile Radio ("SMR") systems that has been endorsed by the Board of Directors of the American Mobile Telecommunications Association ("AMTA"),

---

1 OneComm, formerly CenCall Communications Corp., was established in 1989. On May 26, 1994, the company received approval from the shareholders to change its name formally from Cencall to OneComm Corporation.

and (2) respond to comments addressing the Commission's proposed aggregate CMRS spectrum cap.

I. THE COMMISSION SHOULD APPROVE A CONSENSUS WIDE-AREA 800 MHZ LICENSING PLAN FOR DIGITAL SMR SYSTEMS

OneComm noted in its initial comments in this proceeding that SMR industry participants have been discussing possible solutions to the licensing issues facing the industry. These issues first arose with the emergence of digital SMR technology and the desire of numerous SMR service providers to deploy digital Enhanced SMR ("ESMR") networks that offer integrated communications services throughout an extended service area. The passage of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") and the Commission's subsequent decision that SMR services, in large part, would be classified as Commercial Mobile Radio Services ("CMRS"), heightened the industry's desire to find common solutions to its licensing problems.[2]

Under the leadership of AMTA, a general consensus recently has been achieved on a wide-area SMR licensing plan. The plan has been endorsed by the AMTA Board of

---

2 See OneComm Comments in response to the Further Notice of Proposed Rulemaking, filed June 20, 1994, at 7 ("OneComm Comments"). Unless otherwise noted, all comments referred to herein were filed on June 20, 1994, in response to the Further Notice of Proposed Rulemaking.

Directors.[3] OneComm believes that the plan will assist the Commission in accomplishing its congressional mandate to ensure that the technical and operational rules for reclassified CMRS providers are comparable to other service providers offering substantially similar common carrier services.[4]

The licensing plan also satisfies the objectives outlined by the Commission in its 800 MHz Expanded Mobile Service Provider (EMSP) Notice of Proposed Rulemaking,[5] from which a number of proposals in this proceeding are drawn. In the 800 MHz EMSP Notice the Commission stated that, among other goals, new 800 MHz licensing rules must (1) reduce administrative burdens associated with filing and processing requests to implement 800 MHz wide-area SMR systems; (2) permit 800 MHz SMR providers to develop wide-area systems in all parts of the country while affording traditional SMR providers the opportunity to remain viable if they do not seek to build similar systems; (3) ensure efficient use of

---

3 The plan resembles in large part one that was offered by Nextel Communications, Inc. See Nextel Comments at 11-21. It is OneComm's understanding that Nextel supports the AMTA-endorsed modifications made to its proposal.

4 Ominibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d)(3), 107 Stat. 312, 394 (1993) ("Budget Act"). See also FNPRM at 12.

5 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rulemaking, PR Docket 93-144, 8 FCC Rcd 3950 (1993) ("800 MHz EMSP Notice").

the spectrum; and (4) accommodate technologically advanced systems that can support such services as seamless wide-area roaming and high speed data transmission.

A. Overview of the Wide-area 800 MHz Licensing Plan

The Digital Council Plan provides for (1) a contiguous block of spectrum for wide-area SMR providers, (2) the award of licenses on a Major Trading Area ("MTA") basis, and (3) the award of one wide-area ESMR license in each MTA. Co-channel licensees operating in the ESMR contiguous spectrum block would be subject to retuning at ESMR expense to other 800 MHz spectrum locations. If more than one applicant or existing licensee seeks to serve an MTA, a single applicant would be determined through a negotiation process. The Commission itself suggested a similar negotiated approach to resolve wide-area license issues in its 800 MHz ESMP Notice.[6]

1. ESMR Serving Areas To Be Geographically Defined

For many of the same reasons articulated by the Commission in the 800 MHz EMSP proceeding, the consensus licensing plan endorses defining wide-area geographic serving areas on an MTA basis. The areas are large enough to accommodate efficient spectrum re-use, respond to

---

6 See 800 MHz EMSP Notice at 3956.

customers' needs for extensive serving areas, and provide needed economies of scale and scope for technologically advanced networks.[7] In addition, the Commission is expected to award two broadband Personal Communications Services ("PCS") licenses in each MTA within the next year. OneComm expects to compete with PCS operators in terms of price, service and quality, and it is essential that its service area matches that of its expected rivals.

OneComm does not believe that the high volume of applications in recent months to acquire SMR channels will impede the growth of wide-area SMR service or lessen the need for Commission-defined ESMR serving areas.[8] A Commission-defined MTA serving area will allow the company to (1) better serve the needs of its customers for increasingly larger service areas, (2) more accurately and efficiently plan for future business expansion, and (3) dramatically improve its ability to market to new customers. Assuming that the consensus wide-area licensing plan is implemented and ESMRs are no longer handicapped by the Commission's licensing, technical and operational rules, OneComm is confident that ESMR services will grow dramatically and emerge as robust competitors to other CMRS providers.

---

7 800 MHz EMSP Notice at 3953.

8 See 800 MHz EMSP Notice at 3957.

2. A Wide-area Block License Would Include 200 Channels

As OneComm stressed in its initial comments, it is essential for ESMRs to have contiguous blocks of spectrum if they are to compete effectively with other CMRS providers that enjoy access to significantly more spectrum than SMRs. The consensus plan calls for block licenses in channels 401-600 of the existing SMR spectrum -- 861.0125-865.9675 MHz.

3. MTA Licensees Would Be Responsible For "Retuning" Traditional Co-channel SMR Licensees

Since existing 800 MHz licensing procedures require station-by-station applications and do not provide for more than 5 channel block licenses, numerous co-channel SMR systems also are licensed within channels 401-600 in the same geographic areas covered by each wide-area licensee. In order for block licenses to be awarded, these systems must be retuned to the remaining channels 1-400 in the existing private land mobile operators' assigned spectrum. At the discretion of the ESMR block licensee, the consensus plan would require retuning for co-channel licensees operating in channels 401-600. An ESMR, however, must bear the expenses of any channel reassignments for its co-channel licensees. OneComm also suggests that the ESMR be required to continue to protect the co-channel licensee from

interference until the retuning operation has been completed.

OneComm believes that given the spectrum agility of existing 800 MHz SMR equipment, mandatory retuning will not be unduly disruptive for either the co-channel licensees or their customers. Awarding contiguous blocks also will halt spectrum "grabs" and nuisance licensing that have caused administrative problems for the Private Radio Bureau's licensing activities. In addition, ESMR operators will have a licensing scheme that more closely resembles that of their cellular and PCS competitors.

As critical as block licenses are for the competitive strength of ESMR operators, it is equally important that they have continued access to 800 MHz channels 1-400 under existing rules. A 200-channel block will substantially enhance ESMR operators' ability to compete effectively with other CMRS operators, but it is essential that they have access to additional 800 MHz channels for their operations, particularly in more heavily populated areas. Furthermore, as noted below, ESMR operators may need these channels in order to retune the frequencies of co-channel licensees.

4. One ESMR License Should Be Awarded In Each MTA, Pursuant To Service Provider Negotiations

For reasons of regulatory parity and competitive necessity, the consensus plan concludes that one ESMR license should be awarded in each MTA. With the advent of PCS, digital cellular service and satellite-based mobile services, ESMR providers must have sufficient spectrum in any market to be viable competitors. At a minimum, a contiguous 200-channel spectrum block for an entire MTA is required to establish an ESMR operator as a robust challenger to these emerging wireless services. It is OneComm's view that the Commission cannot fulfill its congressional mandate to ensure regulatory parity unless MTA licenses are awarded in this fashion.

Because it appears that there would be at least two qualified wide-area applicants for each MTA license, it is important that all qualified applicants have an opportunity to enter into settlement negotiations for any MTA license. In order to qualify to participate in settlement negotiations for MTA, the consensus plan recommends that a filing deadline for wide-area system applications be set for August 10, 1994.

Potential MTA licensees would be divided into two groups -- (1) existing ESMR licensees or wide-area applicants with applications on file by July 11, 1994, and

(2) applicants filing between July 11 and August 10, 1994.[9] Qualified applicants' and ESMR licensees' systems would be required to meet the definition of "wide-area system" articulated in Private Radio Bureau Chief Ralph Haller's December 23, 1992 letter to David Weisman ("Weisman letter").[10] Further, applicants filing between July 11 and August 10 would be required to include a minimum number of discrete constructed and operational channels to be eligible to participate in the negotiations. The consensus plan does not recommend a specific channel count, and the Commission has not required a specific count in order to seek approval for wide-area systems.

It is OneComm's view that these applicants should include at least 84 discrete constructed and operational channels in their applications. Based upon the system configuration that OneComm has employed in constructing its

---

9 The Budget Act requires the Commission to change its existing service rules to implement the amendments to Section 332 of the Communications Act by August 10, 1994. See Budget Act at § 6002(d)(3).

10 The Weisman letter notes that wide-area requests have been granted where proposed systems are in (1) a waiting list area, (2) an area where the wide-area applicant uses the frequencies requested so extensively that they could not be used by any other applicants to develop a viable system, or (3) any other area where additional 800 MHz channels are unavailable. The letter also points out that wide-area systems are limited to contiguous and overlapping service areas of stations that are constructed and in operation and licensed to or managed by an applicant. Wide-area applicants also must meet aggregate loading standards.

wide-area systems, the company believes that this is the minimum number of channels required to produce a viable wide-area system. By setting an 84-channel threshold for wide-area license applications, the Commission will ensure that only serious applicants with the ability and resources to construct a 200-channel system will be active participants in any settlement negotiations.

Following the August 10, 1994 filing deadline, the Commission would process the wide-area applications and grant those that meet the Weisman letter and minimum channel criteria. OneComm suggests that the Commission subsequently publish a list of qualified wide-area service providers to allow interested parties to determine the wide-area licensees with whom they must negotiate for a specific MTA. Upon publication of the qualified applicant list, wide-area operators seeking the same MTA license would attempt to negotiate an acceptable settlement plan.[11] If the parties are unsuccessful, they would continue to operate under existing wide-area SMR rules and no MTA license would be awarded. The consensus plan does not recommend that the parties be required to reach agreement or that they be placed under any negotiation deadlines.

---

11 Of course, if only one wide-area licensee is listed for a particular MTA, it would be awarded an MTA license without further negotiations.

If the parties reach agreement, OneComm recommends that the Commission seek certifications from all parties engaged in the negotiations consenting to the grant of a block MTA license to the successful party or parties. The successful party then would file an application with the Commission for a 200-channel MTA license. OneComm believes that the ESMR MTA licensees also should be allowed to retain other licensed frequencies within channels 1-400 in order to migrate co-channel licensees.

II. AN ACROSS-THE-BOARD AGGREGATE SPECTRUM CAP IS UNNECESSARY IN THE ALREADY COMPETITIVE CMRS SERVICES MARKET AND MAY ACTUALLY IMPEDE FUTURE COMPETITION

OneComm strongly agrees with the vast majority of commenters that an across-the-broad cap on the amount of spectrum that any CMRS licensee may hold is unnecessary to ensure competition and is therefore unwarranted. The Commission's existing rules, the limited amount of spectrum available outside of PCS and cellular allocations, and the unique characteristics of the industry already ensure that no single licensee will be able to dominate the CMRS marketplace. In fact, the Commission already has made an explicit finding that -- with the possible exception of cellular -- all of the CMRS mobile services are competitive and no existing CMRS licensee has market power.[12]

---

12 See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1467-72 (1994).

Given the characteristics of the wireless communications industry, the threat of traditional anticompetitive activity by industry members is extremely weak and does not support the imposition of an aggregate spectrum cap.[13] Even if there were a basis for concern, there is no evidence to suggest that the Commission's existing rules are insufficient to maintain a competitive environment.

As a practical matter, the limited amount of available CMRS spectrum outside of PCS and cellular allocations, coupled with the construction and operation (i.e., "build-out") requirements currently applied to each category of CMRS service, will effectively prohibit licensees from warehousing spectrum. Additionally, the Commission's new competitive bidding rules would make the acquisition of spectrum solely to eliminate competition so

---

13 For a detailed explanation of why the economic structure of the CMRS industry precludes traditional anticompetitive concerns such as collusion or the unilateral control of prices or output by a single operator and therefore obviates the need for a spectrum cap, see Comments of AirTouch Communications at 6-16 and attached Affidavit of Professor Jerry A. Hausman. Although OneComm agrees with AirTouch's economic assessment, it does not support AirTouch's proposal that spectrum limits applicable to cellular and PCS operators be extended to ESMR providers. As explained in OneComm's initial comments, ESMR providers have access to significantly less spectrum than either PCS or cellular operators, and operate under less advantageous licensing, operational and technical rules. The imposition of a spectrum cap on ESMRs in light of these barriers will harm, not encourage, robust competition among CMRS operators.

expensive that prudent businesspeople would not likely contemplate such action.[14] Moreover, as OneComm detailed in its Comments, existing PCS restrictions effectively limit aggregation by both cellular and PCS licensees for a substantial percentage of CMRS services.[15]

Even assuming a party would act anticompetitively, and could do so, a spectrum cap is not a practical means of precluding such behavior. Any spectrum limit selected would quickly become obsolete in light of the rapid technological advances in the industry and would require constant Commission monitoring and adjustment.[16] Rather than involve itself in this administrative morass, the Commission should instead address any competitive concerns at renewal on a case-by-case basis. The threat of the loss of a license is typically sufficient to ensure that a licensee does not unduly impede competition.

In addition to being unwarranted and impractical, a CMRS spectrum cap -- whether aggregate or service-specific[17]

---

14 See Comments of BellSouth at 7. Indeed, there is no evidence that any CMRS licensee has acquired spectrum for anticompetitive purposes.

15 See OneComm Comments at 7-8. See also Comments of Motorola, Inc. at 4-6, GTE at 19-20, and Dial Page, Inc. at 3.

16 Id.

17 See e.g., Comments of American Personal Communications, The Bell Atlantic Companies, New Par, The Southern Company, and Brown and Schwaninger (supporting a service-specific cap).

-- would ultimately impede future competition. For example, imposing specific channel limits to allow for the simultaneous operation of three ESMR systems in a market, as suggested by Brown & Schwaninger,[18] will discourage ESMR operators from building systems in the first place, particularly in large urban areas where they need large contiguous blocks of spectrum in order to compete successfully with cellular or PCS. As it is, there are only 280 channels allocated to SMR services as opposed to 416 channels allocated to cellular or PCS. In order to achieve the requisite economies of scope to compete, ESMR operators must be able to aggregate sufficient spectrum. Adoption at this time of any form of spectrum cap on ESMR providers will impede the development of this promising competitor to other CMRS operators.

CONCLUSION

OneComm urges the Commission to consider seriously the AMTA-endorsed licensing plan. The plan will contribute significantly to the continued development of ESMR services and their ability to compete effectively with other CMRS providers.

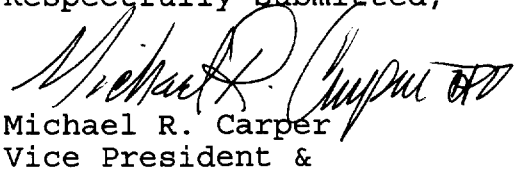
Additionally, in light of the almost universal strong opposition to spectrum cap for CMRS providers and

---

18 Comments of Brown & Schwaninger at 16-19.

given the potential anticompetitive consequencies of such a cap, OneComm respectfully urges the Commission not to adopt either an aggregte or service-specific spectrum cap.

Respectfully submitted,



Michael R. Carper
Vice President &
General Counsel

CERTIFICATE OF SERVICE

I, Erin F. Osborne, do hereby certify that I have this 11th day of July, 1994, hand delivered copies of the foregoing document to the following:

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Ralph Haller
Chief, Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

John Cimko, Jr.
Chief, Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Gerald Vaughn
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

David Furth
Acting Chief, Rules Branch
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Julia Kogan
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Marty Liebman
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

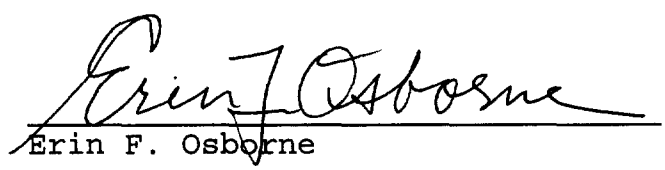
Jay Jackson
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Nancy Boocker
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

Kathleen O'Brien Ham
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

American Mobile Telecommunications Association
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Robert S. Foosaner, Esq.
Larry Krevor, Esq.
Nextel Communications, Inc.
800 Connecticut Avenue, N.W.,
Suite 1001
Washington, D.C. 20006



Erin F. Osborne